## United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

## Advice Memorandum

DATE: January 18, 2001

TO : James J. McDermott, Regional Director

Region 31

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: UFCW Local 1001 (MultiCare)

Case 31-CB-10707

This case was submitted for advice on whether the Union need not have informed a newly hired employee about her <a href="Beck">Beck</a> rights because the employee could have escaped paying any dues at all pursuant to an "escape" provision in the union-security clause.

The parties' bargaining agreement contains a union-security clause allowing newly hired employees to escape any dues paying obligation if, during the first 30 days of their employment, they notify the Union of that intention via certified mail. The Charging Party was made well aware of this "escape" option during the first few days of her employment. The Charging Party, however, failed to notify the Union of her intention to escape paying any dues via certified mail.

Two months later, the Union sent the Charging Party membership information with a cover letter stating that she owed a certain amount of dues. This information apparently did not also contain the proper <a href="Beck">Beck</a> notice of the Charging Party's right to become only a financial core member. The Union contends that it need not have supplied any <a href="Beck">Beck</a> information because the Charging Party could have <a href="availed">availed</a> herself of a contractual right to pay no dues whatsoever.

We conclude that the Union unlawfully failed to supply the Charging Party with an initial <u>Beck</u> notice.

Under <u>California Saw</u>, <sup>1</sup> when or before a union seeks to collect dues and fees under a union-security clause, the union must inform employees of their <u>General Motors</u><sup>2</sup> right to be or remain nonmembers, and also that

<sup>1</sup> California Saw & Knife Works, 320 NLRB 224 (1995), enfd.
133 F.3d 1012 (7th Cir. 1998).

<sup>&</sup>lt;sup>2</sup> NLRB v. General Motors, 373 U.S. at 734, 740 (1963).

nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.<sup>3</sup>

If an employee chooses to object, the union must then apprise the employee of "the percentage of the reduction, the basis for the calculation, and the right to challenge these figures." Subsequent Board decisions make clear that California Saw contemplates two distinct notices. The first (pre-objection) notice is owed to employees who may or may not have previously chosen to be union members. The second (post-objection) notice is owed to employees who have chosen (a) to be nonmembers; and (b) to exercise their Beck objection right.

It is quite clear that the initial <u>Beck</u> notice must be provided when or before a union seeks to collect dues and fees under a union-security clause. Thus the Board has found that a union violated Section 8(b)(1)(A) when it "failed to give sufficient notice, as defined by California

<sup>&</sup>lt;sup>3</sup> <u>California Saw</u>, supra, 320 NLRB at 233.

<sup>4 &</sup>lt;u>Id</u>.

<sup>&</sup>lt;sup>5</sup> See, e.g., <u>Grocery Employees</u>, <u>Local 738 (E.J. Brach)</u>, 324 NLRB 1193 (1997) (differentiating between "initial notice" and "notice to objectors" where there were no nonrepresentational union expenditures; employees nevertheless entitled to initial notice since an employee "might wish to pursue the nonmember option . . . to assure that he will be in a position to object if the union's policy changes in the future").

<sup>&</sup>lt;sup>6</sup> See <u>E.J. Brach</u>, supra 324 NLRB at 1193.

<sup>&</sup>lt;sup>7</sup> See, e.g., <u>California Saw</u>, supra, 320 NLRB at 233, 235, and n. 57; <u>Service Employees Local 74 (Parkside Lodge of Connecticut)</u>, 323 NLRB 289 (1997).

Saw, before seeking to obligate nonmember unit employees to pay fees and dues under a union-security clause."8

In the instant case, the Union similarly failed to provide the Charging Party with an initial Beck notice at the time when it sought to obligate her as a nonmember to pay fees and dues under the parties' union-security clause. The Union defends its failure on the ground that it went beyond any Beck obligation by negotiating a union-security clause which allowed the Charging Party to have avoided all dues and fees. However, after the Charging Party failed to take advantage of the opportunity to avoid any dues paying obligation, the Union sought to enforce its union-security clause. At that juncture, the Union was required to accord the Charging Party her Beck rights.

Finally, it is also unavailing for the Union to argue that the presence of the "escape" provision in the union-security clause means that there was no union-security clause in effect during the first 30 days of the Charging Party's employment, and thus that the Union owed no <a href="Beck">Beck</a> obligation. Union-security clauses may never be enforced within the first 30 days of employment. Thus the presence of the "escape" clause in the instant union-security clause is essentially irrelevant.

B.J.K.

<sup>&</sup>lt;sup>8</sup> E.J. Brach, supra, 324 NLRB at 1194.